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Comptroller General
of the United States
Washington, D.C. 20548

# Decision

**Matter of:** Collins & Aikman Corporation

**File:** B-247961

**Date:** July 22, 1992

Gary Schexnaildre for the protester.
Dee LeMay for Mannington Carpets, Inc., an interested party.
Timothy A. Beyland, Department of the Air Force, for the agency.
James Pecora and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

1. Proposal was properly rejected for failure to meet requirement for certified fire test results where offeror only promised that certified test results would be furnished but failed to provide them.

2. Protester whose proposal was properly rejected is not an interested party under the Bid Protest Regulations eligible to protest the acceptability of the awardee's offer where there is another acceptable offeror in the competition that would be in line for award if the protest were sustained.

**DECISION**

Collins & Aikman Corporation protests the rejection of its offer and the acceptance of the offer of Mannington Carpets, Inc. under request for proposals (RFP) No. F11623-92-R-0006, issued by the Department of the Air Force, Scott Air Force Base, Illinois, for a quantity of carpet tiles, Interface Style P/19191000000, or Lees Modular Carpet Style LF502 Pebbleweave, or equal.

We deny the protest in part and dismiss it in part.

The RFP requested offers for the brand name products or equal products that met various listed salient characteristics of the specified brand names, including that the carpet tiles have "Protekt²" fiber treatment. Award was to be made to the low-priced offeror whose offer conformed to the RFP requirements.

Twenty six offers were submitted by the January 3, 1992, closing date. Ten offers from nine offerors were included in the competitive range. Collins & Aikman submitted two offers, both of which were included in the competitive range. Collins & Aikman's initial "equal product" offers of its "Infinity 22" and "Infinity 28" carpet tiles did not address, among other things, the fiber treatment requirement.

On January 17, the agency conducted oral discussions with Collins & Aikman, requesting, among other things, that Collins & Aikman identify and describe its fiber treatment and fire test results. On that same date, Collins & Aikman responded that it would provide the "Chromoset" fiber treatment. In response to the request for fire test results, Collins & Aikman stated:

> "Testing is still underway and the actual certified test results will be forwarded as soon as possible. Based upon initial testing, the attached letter certified that the [Infinity 28] construction exceeds [pertinent flammability and smoke criteria]."

The enclosed certification letter promised that Collins & Aikman's carpet tile "will be certified" to meet the pertinent flammability and smoke criteria.

On January 28, 1992, amendment No. 0003 to the RFP was issued increasing the quantity of carpet tile and adjusting the delivery dates.[1] This amendment was accompanied by a letter requesting best and final offers (BAFO) to be submitted by February 10. The letter to Collins & Aikman also requested that firm to identify the number of "foot traffics" and washings.[2] The letter warned that the failure to provide the requested information would remove the offeror from consideration for award.

Collins & Aikman submitted a BAFO by the February 10 due date; however, this response did not contain any information regarding "foot traffics" or washings. On February 11, the Air Force received a letter from Collins & Aikman that

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[1]The first delivery was to be made on April 15, 1992.

[2]The Air Force states that the purpose of this information was to ascertain whether the fiber treatments offered were equal to the Protekt[2] fiber treatment. Protekt[2] is rated to withstand 500,000 "foot traffics" and 20 washings.

purportedly supplied information responsive to the "foot traffics" and washings rating requests. Neither submission contained fire test results.

The Air Force rejected Collins & Aikman's low-priced proposals because the proposals did not provide information regarding "foot traffics" and washings[3] and did not include certified fire test results. The Air Force then made award to Mannington, the low acceptable offeror.[4] This protest followed. Since the protest was filed more than 10 calendar days after award, the agency has not stayed performance of the contract.

Collins & Aikman protests that the agency should not have rejected its proposal for failing to provide certified fire test results because it had promised to meet this requirement.[5] We disagree. There is a significant difference

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[3]The RFP contained a late proposal clause, which generally precludes the consideration of information submitted after the time and date specified for receipt of BAFOs. The agency clearly required the "foot traffics" and washings information to be submitted by the BAFO due date. Consequently, the agency properly did not consider Collins & Aikman's late submittal and was not required to reopen discussions to allow Collins & Aikman to submit it. See American Video Channels Inc., B-236943, Jan. 18, 1990, 90-1 CPD ¶ 67. In any case, the protester, in its comments on the protest report, admits that the descriptive material it ultimately submitted did not readily correlate to the RFP requirements in that the number of "foot traffics" and washings was not stated.

[4]There is another offeror that was found acceptable.

[5]The RFP contained no salient characteristic relating to fire testing and did not explicitly state that fire tests results were required. Since the agency clearly intended to impose a requirement for certified fire tested carpet tile (this requirement is intended to assure that overly flammable or smokey carpet is not procured--the protester does not dispute the need for such a requirement), the agency should have issued a written amendment to the RFP expressly incorporating that requirement. Federal Acquisition Regulation § 15.606(a); see Biegert Aviation, Inc., B-222645, Oct. 10, 1986, 86-2 CPD ¶ 419. However, its failure to do so was not prejudicial to the protester. The protester's response to the agency indicated that the protester was cognizant of the need for certified fire test results and that it would forward such results to the agency as soon as possible. Therefore, the Air Force's failure to amend the RFP provides no basis for sustaining the protest.

between a promise that the offered carpet will pass testing and the actual certified test results. See generally Department of the Air Force--Recon., B-221181.2, Nov. 10, 1986, 86-2 CPD ¶ 542. Here, it is clear that the Air Force was seeking a contract for carpet that had been tested against applicable smoke and flammability criteria--it had no interest in awarding a contract for carpet that was still undergoing testing. Therefore, since we think it apparent from the protester's own response to the Air Force that it understood the Air Force's requirement for certified test results, and since there is nothing in the protester's submissions, or otherwise in the record, to indicate that its offered carpet has been tested and certified, we find that the Air Force had a reasonable basis to reject Collins & Aikman's proposal for its failure to provide the requested fire test results.[6]

With regard to the fiber treatment requirement, Collins & Aikman admits that its data concerning its offered fiber treatment's purported equality to the RFP requirements was not only late submitted, but did not readily correlate to the RFP terminology in that it did not specify the requested washings and "foot traffics" ratings. Collins & Aikman asserts, however, that Mannington's offered carpet tile also is not equal to the RFP requirements for fiber treatment.

We will not consider this issue because Collins & Aikman is not an interested party under our Bid Protest Regulations eligible to maintain this protest basis. A party is only interested to maintain a protest of a particular matter if it would be in line for award if the protest issue were sustained. See 4 C.F.R. §§ 21.0(a), 21.1(a) (1992); Dick Young Prods. Ltd., B-246837, Apr. 1, 1992, 92-1 CPD ¶ 336. As discussed above, the Collins & Aikman proposal properly was considered unacceptable because it did not comply with the fire test requirements. There was also another acceptable offer, which would be in line for award if Mannington's

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See Ohmeda, A Div. of the BOC Group, Inc., B-228607, Nov. 30, 1987, 87-2 CPD ¶ 529.

[6]Collins & Aikman suggests that the agency should not have accepted Mannington's certification that its offered carpet tile met the fire test requirements. However, there is no evidence that Mannington's certification is false or inaccurate.

proposal were rejected. Since the protester would not be in line for award if we were to sustain the protest on this issue, it is not an interested party.

The protest is denied in part and dismissed in part.

for James F. Hinchman
General Counsel